In the High Court of Punjab and Haryana, at Chandigarh.

1. **Civil Writ Petition No. 16527 of 2001**

Date of Decision: 22.10.2008

Prem Singh Hooda

…Petitioner

Versus

State Bank of Patiala and Others

…Respondents

2. **Civil Writ Petition No. 14886 of 2001**

Parkash Chand and Others

…Petitioners

Versus

State Bank of Patiala and Others

…Respondents

3. **Civil Writ Petition No. 16528 of 2001**

Balbir Singh

…Petitioner

Versus

State Bank of Patiala and Others

…Respondents

4. **Civil Writ Petition No. 16529 of 2001**

Prabhati Lal

…Petitioner

Versus

State Bank of Patiala and Others

…Respondents

5. **Civil Writ Petition No. 19846 of 2002**

Balwant Singh Kaul and Others

…Petitioners

Versus

State Bank of Patiala and Others

…Respondents

6. **Civil Writ Petition No. 6540 of 2003**

Pritam Singh Bedi and Others

…Petitioners

Versus

State Bank of Patiala and Others

…Respondents

7. **Civil Writ Petition No. 17327 of 2003**

Pralad Chand

…Petitioner

Versus

State Bank of Patiala and Others

…Respondents

AND

8. **Civil Writ Petition No. 19441 of 2003**

Amin Chand

…Petitioner

Versus

State Bank of Patiala and Others

…Respondents

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA.

Present: Mr. R.K.Malik, Senior Advocate
with Mr. Yashdeep Singh, Advocate
for the petitioners (In Civil Writ Petition Nos.16527 of 2001, 16528 of 2001, and 16529 of 2001)

Mr. M.K.Tiwari, Advocate
for the petitioners (In Civil Writ Petition Nos.14886 of 2001, 19846 of 2002 and 6540 of 2003)

Mr. Ramesh Sharma, Advocate
for the petitioners (In Civil Writ Petition Nos. 17327 of 2003 and 19441 of 2003)

Mr. C.B. Goel, Advocate
for respondent No.1 in Civil Writ Petition Nos. 16527, 16528 and 16529 of 2001, for respondents No.1 and 2 in Civil Writ Petition Nos. 14886 of 2001, 19846 of 2002, and 6540 of 2003.

Mr. H.N.Mehtani, Advocate,
for respondents No.1 and 2 in Civil Writ Petition No. 6540 of 2003, for respondents No.1 to 3 in Civil Writ Petition No.17327 of 2003 and for respondents No.1 to 3 in Civil Writ Petition No. 19441 of 2003

None for respondents No.2 and 3 in Civil Writ Petition No. 16527, 16528 and 16529 of 2001, respondent No.1 in Civil Writ Petition No.14886 of 2001, respondent No.3 in Civil Writ Petition Nos. 19846 of 2002 and 6540 of 2003, for respondent No. 4 in Civil Writ Petition No. 17327 of 2003 and for respondents No.4 and 5 in Civil Writ Petition No. 19441 of 2003.

Kanwaljit Singh Ahluwalia, J. (Oral)

By this common judgment, eight Civil Writ Petitions bearing Nos. 16527, 14886, 16528 & 16529 of 2001, 19846 of 2002, 6540, 17327 & 19441 of 2003 will be decided.

After hearing the parties, undisputed facts are that the petitioners are employees of State Bank of Patiala. On 20.1.2001, the State Bank of Patiala circulated State Bank of Patiala Voluntary

Retirement Scheme (hereinafter referred to as “the Scheme”). The Scheme had to remain in operation from 15.2.2001 to 1.3.2001. The petitioners have opted for Voluntary Retirement Scheme and they were retired as per the terms & conditions of Scheme.

Short dispute, which has arisen for consideration of this Court, is that those employees who opted for Voluntary Retirement Scheme and had rendered service less than 20 years have been made ineligible for pension.

Mr. R.K.Malik, learned Senior counsel assisted by Mr. Yashdeep Singh, Advocate, appearing for the petitioner in Civil Writ Petition Nos. 16527 of 2001, 16528 of 2001, and 16529 of 2001, has drawn my attention to State Bank of Patiala (Employees') Pension Regulations, 1995 (hereinafter referred to as “1995 Regulations”). He has read Clause 2 i.e. Definitions clause and, in particular, has referred to Clause (y), which reads as under:-

> “2. DEFINITIONS:
>
> XXXX XXXX XXXX
>
> (y) “retirement” means cessation from Bank's Service -
>
> a) on attaining the age of superannuation specified in Service Regulations or Settlements;
>
> b) on voluntary retirement in accordance with provisions contained in regulations 29 of these regulations;
>
> c) on premature retirement by the Bank

before attaining the age of superannuation specified in Service Regulations or Settlement".

He has also drawn my attention to Clause 14 of 1995 Regulations, which prescribe qualifying service, and the same reads as under:-

"14. QUALIFYING SERVICE

Subject to the other conditions contained in these regulations an employee who has rendered a minimum of ten years of service in the Bank, on the date of his retirement or on the date of which he is deemed to have retired shall qualify for pension".

He has also read Section 28 of 1995 Regulations, which define the superannuation pension and he has also read Clause 29, which is regarding pension on voluntary retirement, especially Clause 29 (1) to (4) and he has further read Clause 32 to say that the employees who have got voluntary retirement will be entitled to pension even if their qualifying service for pension is less than 20 years because Clause 32 defines premature retirement pension and also take into consideration settlement. He emphasized that Clause 29 also take into consideration settlement, therefore, Voluntary Retirement Scheme flouted by the Bank is nothing but a proposed settlement. Clause 7 of the Scheme enumerate other benefits, to the employees seeking voluntary retirement. Clause 7(i) (ii) and (iii) read as under:-

"7. Other Benefits

i) Gratuity as payable under the extant

instructions on the relevant date.

ii) Provident Fund contribution as per SBP Employees Provident Fund Rules as on relevant date.

iii) Pension or Bank's contribution to Provident Fund as the case may be as per rules applicable on the relevant date on the basis of actual years of service rendered".

Mr. Malik has also relied upon a Division Bench judgment of this Court rendered in ***Dharam Pal Singh v. Punjab National Bank and Others 2008(1) Punjab Law Reporter 745*** and has contended that the Punjab National Employees Pension Regulation, 1995 is *pari-materia* same to the 1995 Regulations. He has stated that the provisions relied upon in ***Dharam Pal Singh's case*** *(supra)*, Clauses 2, 14, 28, 29 and 32 of the Pension Regulations of both the banks i.e. State Bank of Patiala and Punjab National Bank are identical.

With the aid of learned counsel, I have also compared other benefits available to Punjab National Bank Employees, noticed in ***Dharam Pal Singh's case*** *(supra)* with other other benefits which were permissible to the employees of State Bank of Patiala. In Punjab National Bank Voluntary Retirement Scheme, other benefits were noticed in Clause 3.5 (ii), which read as under:-

"ii) a) Pension (including commuted value of pension) as per PNB (Employees) Pension Regulations, 1995

OR

b) Bank's contribution towards PF as per existing rules.

iii) Leave encashment as per existing rules".

Whereas other benefits formulated in Clause 7(3) of the Scheme, are almost identical except that in case of Punjab National Bank Employees, it was stated that the pension will be as per Punjab National Bank (Employees) Pension Regulations, 1995. In case of employees of State Bank of Patiala, it was stated that pension will be as per rules of the bank. This comparison has been done because Mr. Goel appearing for the State Bank of Patiala has stated that service conditions of employees of Punjab National Bank were different from service conditions of employees of State Bank of Patiala.

Having compared and found that there is no difference in the regulations of Punjab National Bank Employees which have been noticed in ***Dharam Pal Singh's case*** *(supra),* I have no other option but to allow the present writ petitions as per the ratio of ***Dharam Pal Singh's case*** *(supra)* as I am bound by the decision of a Division Bench of this Court, wherein it was held as under:-

"7. Some of the relevant provisions of Pension Regulations for consideration of the claim of the petitioner for pension are reproduced below:-

"2. DEFINITIONS :-

In these regulations, unless the context otherwise requires:-

(y) "retirement" means cessation from Bank's

service, -

a) on attaining the age of superannuation specified in Service Regulations or Settlements;

b) on voluntary retirement in accordance with provisions contained in regulations 29 of these regulations;

c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement;

14. QUALIFYING SERVICE :-

Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

28. SUPERANNUATION PENSION

Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements

29. PENSION ON VOLUNTARY RETIREMENT :-

(1) On or after the Ist day of November, 1993, at any time after an employee has completed twenty years of qualifying

service he may, by giving notice of not less than three months in writing to the appointing authority retire from service.

XXX XXX XXX XXX

(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:

(3) XXX XXX XXX XXX

(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, he shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement".

8. Learned counsel for the respondent Bank has referred to circular dated 19.12.2000, Annexure P-7, wherein it has been decided to allow superannuation pension to those employees who are pension optees with minimum 15 years of service and their offer to seek voluntary retirement under the Scheme has been accepted. The said decision is pending amendment to Regulation 28 of

the Pension Regulations in terms of the advise of the Government of India dated 11.12.2000. The relevant part of the circular reads as under:-

"3. ..... Having regard to this, banks have been advised to incorporate the following amendment to Regulation 28 of the Pension Regulations:-

> "Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations of Settlement.

Provided that, pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after having service for a minimum period of 15 years in terms of any Scheme that may be framed for the purpose by the Bank's Board with the concurrence of the Govt."

4. The Bank is taking steps amendment to Regulation 28 of PNB (Employees) Pension Regulation 1995 in terms of the provisions contained in Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970 pending above amendment to Regulation 28 of Pension Regulation 1995, it has been decided to allow superannuation pension to those employees who are pension optees with minimum 15 years of service and their

offer to seek voluntary retirement under PNBEVRS -2000 has been accepted.

5. Accordingly all incumbents Incharge are advised to ensure:-

a) That the proposal for payment of pension in respect of the above employees (pension optees) are prepared and sent to Pension Fund Deptt. Through respective RO/ZO only under Regulation 28 pertaining to superannuation pension.

b) That the employees (pension optees) who are seeking voluntary retirement under PNBEVR- 2000 irrespective of number of years of service they have put in are eligible for pension as per Regulation 28 read with the amendment referred to above and not under Regulation 29 of Pension Regulation 1995"

9. Learned counsel for the respondents argued before this Court that the claim of the petitioner for pension is governed by Regulation 29 of the Pension Regulation which deals with pension on voluntary retirement. Therefore, the claim of the petitioner has been rightly declined. However, learned counsel for the respondent could not refer to any document in support of the stand in the

written statement that the Pension Regulations were amended so as to permit pension on completion of minimum period of 15 years of service.

10. Learned counsel for the petitioner has submitted that the petitioner has offered for retirement in the month of October / November, 2000. On the said date, Regulation 28 of Pension Regulations was not amended. In fact, there was not even suggestion to amend such Regulation. The suggestion came after the offer for voluntary retirement was submitted by the petitioner. Still further, the decision which has been communicated vide circular 19.12.2000 is in contravention of the Pension Regulations and the Scheme notified. Therefore, the said decision is ineffective, invalid qua the rights of the petitioner which stands crystallised on the date he submitted his offer in pursuance of the Scheme. Since the petitioner fulfills the condition of qualifying service of 10 years, therefore, the grant of pension under Regulation 28 is implied condition of the Scheme. In terms of Regulation 14, the qualifying service is 10 years. In terms of Para 3.5 of the Scheme, the petitioner is entitled to pension in terms of the Pension Regulations. Thus, the petitioner is entitled to pension under Regulation 28 as it existed on 1st

November, 2000, read with Regulation 14 of the Pension Regulations.

11. The arguments that the claim of the petitioner for pension is governed by Regulation 29 is wholly misconceived. Regulation 29 i.e. Pension on Voluntary Retirement, is complete code in itself. Under the said Regulation, pension is payable to an employee who has completed twenty years of qualifying service who has given notice of not less than three months in writing. Still further, the employee has a right to seek withdrawal of his offer for voluntary retirement before the retirement becomes effective.

12. Neither the petitioner has given three months notice nor the claim of the petitioner has been rejected on the ground that he has not completed 20 years of qualifying service. If Regulation 29 is to be extended to the petitioner then he had a right to seek withdrawal of his offer to seek voluntary retirement as well. Therefore, the respondent Bank has rightly not relied upon Regulation 29 in the reply filed.

13. Regulation 29 is a general Regulation which is applicable to all the employees of the Bank independent of the Scheme. If an employee of the Bank completes 20 years of qualifying service, he is

entitled to voluntary retirement. Such is the retirement falling within the meaning of section 2(y)(b) of the Regulations. The Scheme under which the petitioner has opted for retirement is not part of the Regulations. Pension Regulations became applicable to the petitioner in terms of clause 3.5 of the Scheme. Therefore, Regulation 29 cannot be extended to in respect of the claim of the petitioner for pension.

14. As per Scheme, the eligibility to seek retirement is after 15 years of qualifying service or 40 years of age. The petitioner is over 40 years of age and has 10 years of qualifying service. Such service under Regulation 14 is the qualifying service for payment of dues on retirement. The petitioner fulfills the said condition. Clause 3.5 of the Scheme extends benefit of pension under Pension Regulations. As per Regulation 14, 10 years is the period of qualifying service. Therefore, a co-joint reading of the eligibility condition and the benefits payable under the Scheme read with Regulation 14, the petitioner is entitled to pension.

15. The decision in Annexure P-7 cannot be made applicable to the petitioner for the reason that the same has been communicated after the petitioner opted for retirement under the Scheme.

> Still further, the said decision is in the nature of executive instructions and, therefore, cannot override the Scheme for voluntary retirement published and the Pension Regulations. Therefore, the provision of 15 years qualifying service for grant of pension is ineffective qua the rights of the petitioner for grant of pension under the Pension Regulations.
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> 16. In view thereof, present petition is allowed. The petitioner is held entitled to pension under the Pension Regulations. The respondents shall take appropriate steps for payment of pension to the petitioner within three months from today".

Accordingly, the present writ petitions are allowed in the same terms as in ***Dharam Pal Singh's case*** *(supra).*

At this stage, Mr. Goel has stated that it may be noticed that High Court of Himachal Pradesh at Shimla has taken a contrary view. I need not dwell upon this plea as I am bound by the decision of Division Bench of this Court. Therefore, the present writ petitions are allowed in the same terms as in ***Dharam Pal Singh's case*** *(supra).*

(Kanwaljit Singh Ahluwalia)
Judge

October 22, 2008
"DK"